REMARKS / ARGUMENTS

Rejection of Claim 1 Under 35 U.S.C. § 102(b).

The Examiner rejected independent Claim 1 under 35 U.S.C. § 102(b) as being anticipated by United States Patent Number 4,928,565 issued to *Hsieh*. Applicant respectfully traverses the Examiner's such rejection of independent Claim 1 because Applicant believes independent Claim 1 is patentably distinguishable over *Hsieh*.

Specifically, independent Claim 1 herein calls for a bushing "sized to fit into at least one of the plurality of openings in the rim member, and the bushing being configured to accept the tension lug as the tension lug is inserted into one of the plurality of openings in the rim member and into one of the plurality of casings to thereby tighten the rim member to hold the head in position on the shell." This claim expressly requires the bushing to fit within at least one opening of a rim member of a percussion instrument.

An analysis of the *Hsieh* patent shows that the device claimed and disclosed within that patent does not call for a bushing that is inserted into the holes of a rim member. Instead, the only potentially comparable tensioning device in the *Hsieh* device that might relate to the bushing of the present invention is the flexible washer (32). However, this flexible washer (32) is positioned between a metal ring (31) and drum body (2) of the percussion instrument and is not positioned in at least one hole in the

rim (11) of the instrument. In fact, an analysis of the other components of the *Hsieh* device shows that the only component that is located within the holes (13) of the tabs (12) of the rim (11) are the clamping screws (15). Thus, *Hsieh* does not disclose or suggest that any bushing or insert of any kind is located in any of the holes (13) of the rim (11) and therefore does not disclose all of the elements of independent Claim 1 of the present application.

Because the *Hsieh* device does not disclose all of the elements in independent Claim 1 of the present application, Applicant respectfully suggests that independent Claim 1 is not anticipated by *Hsieh* under 35 U.S.C. § 102(b) and that the Examiner's rejection of independent Claim 1 on that basis should be withdrawn.

REJECTION OF CLAIMS 2 AND 3 UNDER 35 U.S.C. §103(a).

The Examiner rejected dependant Claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Number 4,928,565 issued to *Hsieh* in view of United States Patent Number 5,427,009 issued to *LaPlante*. Specifically, the Examiner states that *Hsieh* teaches the device claimed in the present application absent a bushing functioning to reduce the friction between the rim and the tension lug.

It is believed that the Examiner's rejection of dependant Claims 2 and 3 is overcome by the above discussion regarding independent Claim 1. Independent Claim 1 includes at least one element that is not disclosed or suggested in any of the art cited

by the Examiner. Because a rejection under 35 U.S.C. §103(a) must show that the cited art discloses or suggests all of the elements of the rejected claim, a *prima facie* case of obviousness sufficient to reject dependent Claims 2 and 3 cannot be established based upon the art cited by the Examiner because Claim 1, and therefore Claims 2 and 3, call for an element not disclosed by any art cited by the Examiner.[1] Further, dependent claims are not obvious if they depend directly or indirectly from an independent claim which itself is not obvious.[2] It is suggested that because independent Claim 1 is not obvious, dependent Claims 2 and 3 are also not obvious.

Therefore, Applicant believes the rejection of dependent Claims 2 and 3 under 35 U.S.C. §103(a) have been overcome and respectfully requests that the Examiner withdraw the rejection of independent Claims 2 and 3 as being obvious.

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[1] The Manual of Patent Examining Procedure at § 706.02(j)states, "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, ***the prior art reference (or references when combined) must teach or suggest all of the claim limitations***. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed., Cir 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria." (emphasis added.)

[2] The Manual of Patent Examining Procedure at § 2143.03 states, "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988)."

CONCLUSION.

Claims 1 - 11 remain in the application.

Claims 4 - 11 were allowed generally by the Examiner in the First Office Action, but were objected to because Claim 4 depended from a rejected claim.

In light of the above discussion, Applicant believes this Response overcomes the Examiner's rejections of independent Claim 1 under 35 U.S.C. § 102(b). Applicant also believes that this Response overcomes the Examiner's rejections of dependent Claims 2 and 3 as being obvious under 35 U.S.C. § 103(a).

Therefore, it is suggested that Claims 1 - 11 in the present application constitute allowable subject matter and should be favorably considered by the Examiner. It is requested that a timely Notice of Allowance be issued for those Claims.

Respectfully submitted,

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